# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~450~~. 213

G. V. STEVENSON, COLLECTOR OF INTERNAL REVENUE, PLAINTIFF IN ERROR,

vs.

JOHN BEGGS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

**FILED DECEMBER 1, 1871.**

# SUPREME COURT OF THE UNITED STATES.

## No. 450.

G. V. STEVENSON, COLLECTOR OF INTERNAL REVENUE, PLAINTIFF IN ERROR,

vs.

JOHN BEGGS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

INDEX.


| | Original. | Print. |
|---|---|---|
| Assignment of errors | 15 | 10 |
| Certificate of clerk to transcript | 16 | 11 |
| Citation | 18 | 11 |
| Demurrer | 13 | 8 |
| Entry | 3 | 2 |
| Entry | 10 | 6 |
| Entry | 10 | 7 |
| Entry | 13 | 8 |
| Entry | 13 | 9 |
| Petition for certiorari | 1 | 1 |
| Pleas | 10 | 7 |
| Return to certiorari | 5 | 3 |
| Return to citation | 19 | 12 |
| Transcript | 5 | 3 |
| Waiver of jury | 13 | 9 |
| Writ of error | 17 | 11 |

1 At a circuit court of the United States within and for the sixth judicial circuit, and southern district of Ohio, begun and held at the court-house in the city of Cincinnati, on the first Tuesday of April, being the fourth day of that month, in the year of our Lord one thousand eight hundred and seventy-one, and of the independence of the United States of America the ninety-fifth—

Present, the Honorable Philip B. Swing, one of the judges of said court—

Among the proceedings had were the following, to wit:

JOHN BEGGS
*vs.*
G. V. STEVENSON. } 1426. Certiorari from superior court of Cincinnati.

Be it remembered that, heretofore, to wit, on the twenty-second day of December, in the year of our Lord one thousand eight hundred and seventy, came G. V. Stevenson, the defendant herein, by Warner M. Bateman, esq, his attorney, and filed in the clerk's office of the court aforesaid, his petition for certiorari herein, which said petition is in the words and figures following, to wit:

*Petition for certiorari.*

To the honorable the judges of the circuit court of the United States within and for the sixth circuit and southern district of Ohio:

Your petitioner, G. V. Stevenson, respectfully represents that, on the second day of July, A. D. 1870, John Beggs, in the superior court of Cincinnati, a court of record of the State of Ohio, began a civil action for damages in trespass against your petitioner as defendant, said cause being number 26865 on the docket of said court; that in his petition therein filed, the ground of said action is laid in substance as follows, to wit: That the said plaintiff was a distiller of spirits at Metamora, in the State of Indiana, during the months of October, November, and December, 1868; that the defendant, Stevenson, was then and is now collector of internal revenue of the 4th dist. of Indiana, being the district in which said town of Metamora is situated; that the plaint-
2 iff produced certain quantities of distilled spirits, upon which he then & there paid the proper amount of taxes required by law, to said collector; that, afterwards, on the 30th day of Sept., 1869, defendant notified the pl't'ff that he was still indebted to the United States $3,178 30, taxes for said months; that said collector threatened to distrain said plaintiff's property, and in this way unlawfully compelled pl't'ff, on the 23d day of March, 1870, to pay said collector said sum, which he did under protest; that pl't'ff forwarded his claim to the Commissioner Int. Revenue, on or about the 30th day of June, 1870, which was then and there rejected by said Com. Int. Revenue.

Wherefore the pl't'ff asks judgment for 3,178 30 with interest from 23d day of M'ch, 1870.

Your petitioner further respectfully represents that, at the time the said matters and things complained of in the said petition of John Beggs, aforesaid, occurred, and at the time the said suit against him was begun, he was and still is an officer of the United States, that is to say, your petitioner was and still is collector of internal revenue for the 4th collection district of Indiana; that the acts for and on account of which the said suit was begun were done under the revenue laws of

the United States, and under color thereof, and on account of the right, authority, and title claimed by your petitioner as such collector of the 4th dist. as aforesaid; that said suit was begun by process which was served upon your petitioner within the southern district of Ohio, and that said suit has not yet been tried.

Wherefore your petitioner prays that your honors will cause a writ of certiorari to issue to the said superior court of Cincinnati, requiring said court to send to this honorable court the record and proceedings in said cause so begun as aforesaid.

G. V. STEVENSON,
By WARNER M. BATEMAN,
*U. S. Att'y, S. D. O.*

UNITED STATES OF AMERICA,
*S. Dist. of Ohio:*

3 G. V. Stevenson, being duly sworn, says the facts stated in the foregoing petition are true.

GILLEN V. STEVENSON. [SEAL.]

Sworn to before me and subscribed in my presence this 21st day of December, 1870. Witness my hand & notarial seal the day and year above written.

[NOTARIAL SEAL.] OMAR F. ROBERTS,
*Notary Public in and for the County of Dearborn, in the State of Indiana.*

I, Warner M. Bateman, an attorney and counsellor at law of the several courts of record of the State of Ohio, and of the circuit and district courts of the United States for the southern district of Ohio, certify that, as counsel for G. V. Stevenson, petitioner, I have examined the proceedings against him and carefully enquired into all the matters set forth in the petition, and believe the same to be true.

WARNER M. BATEMAN,
*U. S. Attorney, S. D. O.*

And afterwards, to wit, but on the same day and in the year last aforesaid, an entry was made upon the journal of said court, in the words and figures following, to wit:

*Entry.*

Upon application of said Stevenson, defendant in above case, and for good cause shown, it is ordered that a writ of certiorari issue herein, directed to the superior court of Cincinnati, returnable on the first day of the next term of this court; and on the return of said writ with the transcript in this case, it is ordered that this case proceed in all respects as if the same had been originally commenced in this court.

And thereupon, on said twenty-second day of December, in the year last aforesaid, there was issued out of the clerk's office of said court the writ of certiorari herein, which said writ is in the words and figures following, to wit:

4 THE UNITED STATES OF AMERICA,
*Southern District of Ohio, ss:*

The President of the United States of America to the honorable the judges of the superior court within and for the city of Cincinnati, county of Hamilton, and State of Ohio, greeting:

We, being willing, for certain causes, to be certified in our circuit court

of the United States within and for said district, of certain proceedings lately in your court before you, between John Beggs, plaintiff, and G. V. Stevenson, defendant, in a civil action for damages in trespass, praying judgment against the said defendant by reason of grievances which said John Beggs has alleged against the said G. V. Stevenson, collector of internal revenue for the 4th district of Indiana, which said action is now pending in said court before you, do command you, that, without delay, you send to us, in our said circuit court at Cincinnati, within and for said district, a certified transcript of the record and proceedings in said cause, with all things touching the same, as fully and entirely as they remain in said court before you, by whatsoever names the parties may be called therein, together with this writ, so that, having the same in our said circuit court, on the first Tuesday of February next, at the court-house in said city of Cincinnati, in said district, we may further cause to be done thereon what of right we shall see fit to be done.

[SEAL.] Witness John McLean, clerk of our said circuit court, in and for said district, the 22d day of December, A. D. 1870, and in the 95th year of American independence.

Attest: JOHN McLEAN, *Clerk.*

And afterwards, to wit, on the seventh day of February, in the
5 year of our Lord one thousand eight hundred and seventy-one, came H. H. Tinker, clerk of the superior court of Cincinnati, to which said writ was in form aforesaid directed, and returned the same into the clerk's office of our said court with his return endorsed thereon, in the words and figures following, to wit:

*Return to certiorari.*

1871. Jan'y 28. I herewith return a transcript as herein commanded.

[SEAL.] H. H. TINKER, *Clerk,*
Per EMIL HOFFMAN, *Deputy.*

Which said transcript is in the words and figures following, to wit:

*Transcript.*

Superior court of Cincinnati.

THE STATE OF OHIO,
*Hamilton County, ss:*

JOHN BIGGS, PLAINTIFF, *ag'st* G. V. STEVENSON, DEFENDANT. } 26865. Money only.

Be it remembered that, heretofore, to wit, on the 1st day of December, A. D. 1870, came the above-named plaintiff, by Burnett, Follett and Wright, his attorneys, and filed in the office of the clerk of this court his certain petition and præcipe, clothed in the words and figures following, to wit:

*Petition.*

Superior court of Cincinnati.

JOHN BIGGS *vs.* G. V. STEVENSON. } Petition.

The plaintiff, complaining of the defendant, alleges that, during the

6 months of September, October, and November, A. D. 1868, he, the said plaintiff, was a lawful distiller at Metamora, Indiana; that the defendant, G. V. Stevenson, was, during said months, and has been ever since, collector of internal revenue for the 4th district of said State of Indiana, in which said district said town of Metamora is situate; that, during said months aforesaid, plaintiff produced a large quantity of distilled spirits from the grain used in his said distillery during said months; that the quantity so produced by him was largely in excess of eighty per cent. of the producing capacity of his said distillery, as the same has been estimated and fixed in the manner prescribed by law; that afterwards plaintiff paid to defendant all special and per diem taxes for said months aforesaid, and defendant did not demand or ask plaintiff for any other money as taxes for said months; that the taxes so paid as aforesaid by plaintiff to defendant was the full and just sum due from plaintiff as taxes for said months by reason of his having distilled spirits as aforesaid.

Plaintiff further says that, afterwards, to wit, on or about the 30th day of September, 1869, said defendant being then collector as aforesaid, notified this plaintiff that he, the said plaintiff, was still indebted to the United States in the further sum of three thousand one hundred and seventy-eight dollars and thirty cents, ($3,178 30,) as taxes for said months aforesaid, said amount being claimed as taxes on the number of gallons of distilled spirits not produced by this plaintiff, between what plaintiff had produced and paid taxes on as aforesaid for said months and the full estimated producing capacity of plaintiff's distillery for said months; that defendant threatened to distrain and sell said plaintiff's property if said sum aforesaid was not paid, and defendant by this means unlawfully compelled plaintiff, on or about the twenty-third day of March, 1870, to pay to him said sum of money, which plaintiff did under protest.

That thereupon this plaintiff made up and forwarded to the Commissioner of Internal Revenue a claim to have said sum of money refunded to him, which claim is in form prescribed by said Commissioner

7 to recover taxes wrongfully collected, and was sworn to by this plaintiff and approved by the assessor and collector of internal revenue for said *sixth* district of Indiana; that said claim was, afterwards, on or about the 30th day of June, 1870, rejected by said Commissioner of Internal Revenue.

Wherefore said plaintiff says said sum of money is due him from said defendant, and he prays judgment for three thousand one hundred and seventy-eight dollars and thirty cents, with interest from the 23d day of March, A. D. 1870, and costs of suit.

BURNETT, FOLLETT & WRIGHT,
*Att'ys for Pl'ff.*

STATE OF OHIO, *Hamilton County, ss:*

Erwin B. Wright, having been duly sworn, on his oath says, that he is one of the attorneys of John Biggs, plaintiff in the foregoing suit; that said John Biggs is a non-resident of Hamilton County, and of the State of Ohio. Affiant further says that the facts and statements contained in the foregoing petition are true, as he believes.

ERWIN B. WRIGHT.

Subscribed and sworn to before me this first day of December, A. D. 1870.

[SEAL.]

DAVID M. HYMAN,
*Notary Public, Ham. Co., O.*

*Præcipe.*

Clerk superior court of Cincinnati will issue summons in the above cause, returnable according to law. Endorse, action for money only. Amount claimed $3,178 30, with interest from the 23d day of March, 1870.

BURNETT, FOLLETT & WRIGHT,
*Att'ys for Pl'ff.*

I acknowledge my security for costs in the above cause.
EDMUND DEXTER.

Whereupon, on same 1st day of December, A. D. 1870, there was issued from the office of the clerk of said court a certain
8 summons directed to the sheriff of Hamilton County, clothed in the words and figures following, to wit:

*Summons.*

The superior court of Cincinnati.

THE STATE OF OHIO,
*Hamilton County, City of Cincinnati:*

To the sheriff of the county of Hamilton:

You are commanded to notify G. V. Stevenson, defendant, that he has been sued by John Biggs, plaintiff, in the superior court of Cincinnati, and that, unless he answer by the 31st day of December, A. D. 1870, the petition of the said plaintiff against him, filed in the clerk's office of said court, such petition will be taken as true, and judgment rendered accordingly.

Witness my hand and the seal of the said court, at Cincinnati, this 1 day of Dec., A. D. 1870.

[SEAL.] H. H. TINKER,
*Clerk of the Superior Court of Cincinnati,*
By EMIL HOFFMAN, *Deputy.*

Which said summons was endorsed as follows, to wit:

(Endorsed:) Summons in action for the recovery of money only. Amount claimed $3,178 30, with interest from the 23d day of Nov., A. D. 1870; for which judgment will be taken if you fail to answer to 12th day of Dec., 1870. Burnett, Follett & Wright, att'ys. Edmund Dexter, security for costs.

And afterwards, to wit, on the 12th day of December, A. D. 1870, came the said sheriff, and duly returned the foregoing summons, with his return thereon endorsed, clothed in the words and figures following, to wit:

*Return.*

1870. December 1. Served the within-named G. V. Stevenson with a true copy hereof personally, as per affidavit of Daniel P. Dean,
9 hereto annexed.

D. WEBER, *Sheriff,*
By IRA H. BIRD, *D'p'ty.*

1870. Dec. 1. I hereby authorize Daniel P. Dean to serve the within-named G. V. Stevenson with a copy of the within summons.

D. WEBER,
*Sheriff of Ham. County, Ohio.*

STATE OF OHIO,
*Hamilton County, City of Cincinnati, ss:*

Daniel P. Dean, of lawful age, being first duly sworn, says that he delivered a true copy of this writ to the within-named G. V. Stevenson, personally, on the first day of December, A. D. 1870, in the city of Cincinnati, Ohio. Further affiant says not.

DANIEL P. DEAN.

Sworn to before me, and by the said Daniel P. Dean subscribed to in my presence this 1st day of December, 1870.

H. H. TINKER,
*Clerk Superior Court of Cincinnati,*
By EMIL HOFFMAN, *Deputy.*

*Default.*

And afterwards, to wit, on the 31st day of December, A. D. 1870, the said defendant, who had been duly served with process, having failed to answer or demur to the petition filed herein, as he was ruled to do, default for answer was entered against him by the clerk of said court, in conformity with the rules and regulations thereof.

THE STATE OF OHIO, *Hamilton County, ss:*

I, H. H. Tinker, clerk of the superior court of Cincinnati, hereby certify the above and foregoing to be a full and correct transcript of all the proceedings had in said court in the case of Biggs vs. Stevenson, No. 26865, as the same appear from the files and dockets of said court in my office remaining.

Witness my hand and the seal of said court, at Cincinnati, this 23d day of January, A. D. 1871.

[SEAL.]

H. H. TINKER,
*Clerk Superior Court of Cin'ti,*
By EMIL HOFFMAN, *Deputy.*

And afterwards, to wit, on the tenth day of April, in the year of our Lord, one thousand eight hundred and seventy-one, an entry was made upon the journal of our said circuit court in the words and figures following, to wit:

*Entry.*

On motion to the court, it is ordered that the default herein be, and the same hereby is, set aside, and defendant has leave to plead herein within thirty days.

And afterwards, to wit, on the nineteenth day of May, in the year last aforesaid, an entry was made upon the journal of said court in the words and figures following, to wit:

*Entry.*

On motion to the court, it is ordered that the default herein be, and the same hereby is, set aside, and defendant has leave to file his plea herein forthwith, and the same is accordingly filed.

And which said pleas are in the words and figures following to wit:

*Pleas.*

U. S. circuit court.

JOHN BEGGS
*vs.* } No. .
G. V. STEVENSON.

Now comes the defendant, by Warren M. Bateman, the U. S. att'y, and defends the wrong and injury, etc., and says that he does n' ow'the said sum of money in manner and form as therein alleged; and of
11 this he puts himself upon the country. And the plaintiff doth the like.

And for a second plea in this behalf, the defendant says the plaintiff ought to be barred from having and maintaining his action aforesaid, because he says that, at the time of the said injury complained of by the plaintiff, to wit, on the 30 day of September, 1869, this defendant was a collector duly appointed and qualified for the 4th internal revenue district of the State of Indiana, and that said plaintiff was a distiller in said district; that, by virtue and under the authority of an act of Congress, approved July 20, 1868, the assessor of the said internal revenue district, afterwards, to wit, on the 18th day of March, 1870, at Brookville, in the State of Indiana, duly assessed upon the said John Beggs, distiller as aforesaid, a per-diem tax for the month of September, A. D. 1868, on the distillery of the said John Beggs, amounting to $238 00, under the provisions of the 13 section of the act of Congress aforesaid; and the said assessor, as aforesaid, did also then and there assess upon the said John Beggs, authorized distiller as aforesaid, for the month of October, 1868, as follows, to wit, a tax of $955 50, being for a deficiency of 1,911 proof-gallons of spirits, between the amount of spirits actually produced, as reported by the said John Beggs in his tri-monthly reports for the said month of October, and the amount of proof-spirits to be accounted for by the said Beggs for the said month of October, as determined by the said assessor under and by virtue of the provisions of the 20th section of the act aforesaid; also a special barrel-tax for the said month of October, of $4,291 00, being $4 00 upon 1,072$\frac{30}{40}$ barrels of forty proof-gallons each barrel; and a per-diem tax on the working days of said distillery, of $1,292 for the said month of October, making a total assessment for said month, of $6,542 50; and the said assessor, as aforesaid, did also then and there assess upon the said John Beggs, authorized distiller as aforesaid, for the month of November, A. D. 1868, as follows, to wit, a tax of $2,185 50, being for a deficiency of 4,371 proof-gallons of spirits between the amount of spirits actu-
12 ally produced, as reported by the said John Beggs in his tri-monthly reports for the month of November, 1868, and the amount of proof-spirits to be accounted for by the said John Beggs for the said month of November, as determined by the said assessor under and by virtue of the 20th section of the act *af* aforesaid; also, a special barrel-tax for the said month of November, of $4,128 40, being $4 00 upon

1,032 4/40 barrels of forty proof gallons each barrel, and a per-diem on the working days of said distillery, of $1,252 00 for the said month of November, making a total assessment for said month, $7,565 90, which said total assessment for said months of September, October, and November, 1868, amounting to $14,581 03, the said assessor placed in the hands of this defendant, collector as aforesaid, for collection, as required by law, and thereupon there was deducted from the said total assessment of $14,581 03, the sum of $11,056 73 previously paid by said Beggs, and the defendant, collector as aforesaid, did then and there collect of the said Beggs, distiller, by virtue of the provisions of law, the said balance of $3,524 30, as was his bounden duty so to do; and this defendant says that the said sum of $3,178 30, alleged to have been illegally exacted from the plaintiffs by this defendant, is a part of the said sum of $3,524 30, assessments above set forth, and of no other sum. And this he is ready to verify; wherefore he prays judgment if the plaintiff ought not to be barred from maintaining his action aforesaid, and that this defendant go hence without day.

G. V. STEVENSON,
By WARREN M. BATEMAN, *Att'y.*

And afterwards, to wit, on the twenty-fifth day of May, in the year last aforesaid, came the plaintiff, by Cox, Burnett & Follett, his attorneys, and filed in the clerk's office of said court his demurrer to the plea of defendant herein; which said demurrer is in the words and figures following, to wit:

13 *Demurrer.*

Circuit court of the United States, ss., in the southern district of Ohio.

JOHN BIGGS
*vs.*
G. V. STEVENSON. } No. 1426. Demurrer to plea.

And the said plaintiff, as to the second plea of the defendant, by him secondly above pleaded, saith that the same, and the matters therein contained, in manner & form as the same are above pleaded & set forth, are not sufficient in law to bar or preclude him, the said plaintiff, from having or maintaining his aforesaid action thereof against the said defendant, and that he, the said plaintiff, is not bound by law to answer the same, and this he, the said plaintiff is ready to verify.

Wherefore, by reason of the insufficiency of the said plea, in this behalf, the said plaintiff prays judgment & his debt aforesaid, together with his damages by him sustained, on occasion of the detention thereof, to be adjudged to him, &c.

By COX, BURNETT & FOLLETT,
*His Attorneys.*

And afterwards, to wit, on the sixth day of June, in the year last aforesaid, an entry was made upon the journal of said court, in the words and figures following to wit:

*Entry.*

On motion, it is ordered that plaintiff have leave to withdraw his de-

murrer to defendant's plea in this case, which is done accordingly, and defendant has leave to amend his plea herein within twenty days.

And afterwards, to wit, on the 14th day of July, in the year last aforesaid, came the attorneys for the respective parties in said cause, and filed in the clerk's office of said court waiver of jury herein; which said waiver of jury is in the words and figures following, to wit:

*Waiver of jury.*

U. States cir. court, southern dist. of Ohio.

JOHN BEGGS
*vs.*
G. V. STEVENSON. } 1426.

It is hereby agreed between the district att'y, on behalf of the United States, and as att'y for G. V. Stevenson, def't, and Cox, Burnett & Follett, as att'ys for plaintiff, John Beggs, that a jury shall be, and is hereby, waived in the trial of this cause; that the same shall be tried to the court, and that the finding and judgment of the court shall have the same force and effect as though the same had been tried to a jury.

WARREN M. BATEMAN,
*Att'y for Stevenson.*
COX, BURNETT & FOLLETT,
*Att'ys for Pl'ff, Beggs.*

And afterwards, to wit, on the fourteenth day of July, in the year last aforesaid, an entry was made upon the journal of said court, in the words and figures following, to wit:

*Entry.*

This cause came on to be heard, and the parties having, by written consent, waived a jury, the premises were submitted to the court,
14 who, having heard the evidence, find that the assessor of the fourth district of the State of Indiana, in the month of September, 1869, made a second assessment against the plaintiff, a distiller within said district, for deficiency taxes for the months of September, October, and November, of the year 1868, alleged to be due from him as such distiller; that the returns of plaintiff, for said months of September, October, and November, 1868, were not false or fraudulent, but were true and correct reports of all the spirits by him actually produced, and the amount of such spirits, so reported, exceeded eighty per centum of the producing capacity of the distillery of plaintiff for said months respectively; and that plaintiff made due payment of all the taxes assessible against him for and by reason of such product so reported; but the court further find that by reason of the survey of said distillery, made in pursuance of section 10 of the act imposing taxes on distilled spirits and tobacco and for other purposes, approved July 20, 1868, and in force during the said months of September, October, and November, 1868, the said distillery of plaintiff was estimated to be capable of producing from each bushel of grain used, three and one-quarter gallons of spirits; that the amounts reported by plaintiff as having been produced, at his distillery during said months, was less

1,032 4/40 barrels of forty proof gallons each barrel, and a per-diem on the working days of said distillery, of $1,252 00 for the said month of November, making a total assessment for said month, $7,565 90, which said total assessment for said months of September, October, and November, 1868, amounting to $14,581 03, the said assessor placed in the hands of this defendant, collector as aforesaid, for collection, as required by law, and thereupon there was deducted from the said total assessment of $14,581 03, the sum of $11,056 73 previously paid by said Beggs, and the defendant, collector as aforesaid, did then and there collect of the said Beggs, distiller, by virtue of the provisions of law, the said balance of $3,524 30, as was his bounden duty so to do; and this defendant says that the said sum of $3,178 30, alleged to have been illegally exacted from the plaintiffs by this defendant, is a part of the said sum of $3,524 30, assessments above set forth, and of no other sum. And this he is ready to verify; wherefore he prays judgment if the plaintiff ought not to be barred from maintaining his action aforesaid, and that this defendant go hence without day.

G. V. STEVENSON,
By WARREN M. BATEMAN, *Att'y.*

And afterwards, to wit, on the twenty-fifth day of May, in the year last aforesaid, came the plaintiff, by Cox, Burnett & Follett, his attorneys, and filed in the clerk's office of said court his demurrer to the plea of defendant herein; which said demurrer is in the words and figures following, to wit:

13 *Demurrer.*

Circuit court of the United States, ss., in the southern district of Ohio.

JOHN BIGGS
*vs.*
G. V. STEVENSON. } No. 1426. Demurrer to plea.

And the said plaintiff, as to the second plea of the defendant, by him secondly above pleaded, saith that the same, and the matters therein contained, in manner & form as the same are above pleaded & set forth, are not sufficient in law to bar or preclude him, the said plaintiff, from having or maintaining his aforesaid action thereof against the said defendant, and that he, the said plaintiff, is not bound by law to answer the same, and this he, the said plaintiff is ready to verify.

Wherefore, by reason of the insufficiency of the said plea, in this behalf, the said plaintiff prays judgment & his debt aforesaid, together with his damages by him sustained, on occasion of the detention thereof, to be adjudged to him, &c.

By COX, BURNETT & FOLLETT,
*His Attorneys.*

And afterwards, to wit, on the sixth day of June, in the year last aforesaid, an entry was made upon the journal of said court, in the words and figures following to wit:

*Entry.*

On motion, it is ordered that plaintiff have leave to withdraw his de-

murrer to defendant's plea in this case, which is done accordingly, and defendant has leave to amend his plea herein within twenty days.

And afterwards, to wit, on the 14th day of July, in the year last aforesaid, came the attorneys for the respective parties in said cause, and filed in the clerk's office of said court waiver of jury herein; which said waiver of jury is in the words and figures following, to wit:

*Waiver of jury.*

U. States cir. court, southern dist. of Ohio.

JOHN BEGGS
*vs.*
G. V. STEVENSON. } 1426.

It is hereby agreed between the district att'y, on behalf of the United States, and as att'y for G. V. Stevenson, def't, and Cox, Burnett & Follett, as att'ys for plaintiff, John Beggs, that a jury shall be, and is hereby, waived in the trial of this cause; that the same shall be tried to the court, and that the finding and judgment of the court shall have the same force and effect as though the same had been tried to a jury.

WARREN M. BATEMAN,
*Att'y for Stevenson.*
COX, BURNETT & FOLLETT,
*Att'ys for Pl'ff, Beggs.*

And afterwards, to wit, on the fourteenth day of July, in the year last aforesaid, an entry was made upon the journal of said court, in the words and figures following, to wit:

*Entry.*

This cause came on to be heard, and the parties having, by written consent, waived a jury, the premises were submitted to the court,
14 who, having heard the evidence, find that the assessor of the fourth district of the State of Indiana, in the month of September, 1869, made a second assessment against the plaintiff, a distiller within said district, for deficiency taxes for the months of September, October, and November, of the year 1868, alleged to be due from him as such distiller; that the returns of plaintiff, for said months of September, October, and November, 1868, were not false or fraudulent, but were true and correct reports of all the spirits by him actually produced, and the amount of such spirits, so reported, exceeded eighty per centum of the producing capacity of the distillery of plaintiff for said months respectively; and that plaintiff made due payment of all the taxes assessible against him for and by reason of such product so reported; but the court further find that by reason of the survey of said distillery, made in pursuance of section 10 of the act imposing taxes on distilled spirits and tobacco and for other purposes, approved July 20, 1868, and in force during the said months of September, October, and November, 1868, the said distillery of plaintiff was estimated to be capable of producing from each bushel of grain used, three and one-quarter gallons of spirits; that the amounts reported by plaintiff as having been produced, at his distillery during said months, was less

than three and one-quarter gallons for each bushel of grain by him used during that time; that the Commissioner of Internal Revenue, claiming that plaintiff was liable and bound to pay and account to the Government for taxes upon the amount of three and one-quarter gallons for each bushel of grain by him used during those months, advised and directed the assessor aforesaid to assess plaintiff upon the difference between the amount reported in his returns aforesaid, and the said estimated product of three and one-quarter gallons per bushel as fixed and determined in said survey; that, in pursuance of said advice and direction, the said assessor did, in the month of September, 1869, make an assessment of taxes against said plaintiff for said difference, as for
15 a deficiency in his returns for said months, and make due return of said assessments to the defendant, then collector of internal revenue in said fourth collection district of Indiana; that defendant having made due demand of plaintiff of said taxes so assessed against him, the plaintiff paid to defendant, on the 30th day of September, 1869, the said sum of $3,178 30 upon the said assessment, under protest; plaintiff afterwards, in pursuance of law and the regulations of the Bureau of Internal Revenue, made application for the repayment of the said amount so paid to the Commissioner of Internal Revenue, who refused to allow the same. The court further find that said assessment was illegal, and that the plaintiff is entitled to recover the same of the defendant. The court also find that defendant had probable cause for demanding said sum of plaintiff.

Wherefore it is considered and adjudged that plaintiff recover of defendant the said sum of three thousand one hundred and seventy eight $\frac{30}{100}$ dollars, with interest from September 30, 1869, and his costs herein expended and incurred.

And afterwards, to wit, on the ninth day of November, in the year last aforesaid, came the defendant, by Warren M. Bateman, esq., his attorney, and filed in the clerk's office of said court assignment of errors herein; which said assignment is in the words and figures following, to wit:

*Assignment of errors.*

Supreme Court of United States. In error. Of term in the year one thousand eight hundred and seventy-one.

JOHN BEGGS
*vs.* } 1426.
G. V. STEVENSON.

Afterwards, to wit, on the first Monday of December, in the same term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, comes the said G. V. Stevenson, by his attorney, and says that in the record and proceedings aforesaid, there is manifest error in this, to wit:

16 That the declaration aforesaid and the matter therein contained are not sufficient in law for the said John Beggs to have or maintain his aforesaid action thereof against the said G. V. Stevenson.

That, from the record aforesaid, it appears that the court, in its judgment and findings, erroneously found the said assessment against the said John Beggs to have been illegal, and that the said John Beggs was entitled to recover the amount thereof of the said G. V. Stevenson.

That, from the record, it further appears that judgment was erroneously rendered in favor said John Beggs that he recover of said G. V. Stevenson the sum of three thousand one hundred and seventy-eight $\frac{30}{100}$ dollars and his costs of suit therein incurred.

And the said G. V. Stevenson prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by reason of said judgment.

WARREN M. BATEMAN,
*Att'y for Stevenson.*

THE UNITED STATES OF AMERICA,
*Southern District of Ohio, ss:*

I, John McLean, clerk of the circuit court of the United States within and for said district, hereby certify the foregoing transcript to be truly taken and copied from the files and record of said court as the same remain in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Cincinnati, this 9th day of November, A. D. 1871, and in the 96th year of the independence of the United States of America.

[SEAL.] JOHN McLEAN, *Clerk.*

17 Supreme Court of the United States.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States within and for the southern district of Ohio, greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a plea which is in the said circuit court before you between John Beggs, plaintiff, and G. V. Stevenson, defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, on the first Monday in the month of December next, in the said Supreme Court, then and there to be held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this ninth day of November, in the year of our Lord one thousand eight hundred and seventy-one, and of the independence of the United States of America the 96th.

[SEAL.] Attest: JOHN M'LEAN,
*Clerk.*

18 THE UNITED STATES OF AMERICA,
*Supreme Court of the United States:*

To JOHN BEGGS, greeting:

Whereas G. V. Stevenson has obtained the allowance of our writ of

error to the circuit court of the United States within and for the southern district of Ohio, directed to remove into the said Supreme Court, to be holden at the city of Washington, on the first Monday in the month of December next, the record of a certain plaint, process, proceedings, and judgment in an action of certiorari, wherein you, the said John Beggs, in that action lately recovered against the said G. V. Stevenson the sum of three thousand one hundred and seventy-eight $\frac{30}{100}$ dollars and costs, as by the said record in the said circuit court remaining appears, in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said G. V. Stevenson we are informed; and our said writ of error granted, issued, and allowed as aforesaid, for the purpose of correcting the error aforesaid alleged, if any there be: You are, therefore, hereby commanded and cited to be and appear before the judges of the said Supreme Court, at the city of Washington, at the next term of said court, to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States of America, this 9th day of November, in the year of our Lord one thousand eight hundred and seventy-one, and of the independence of the United States of America the 96th.

[SEAL.]

PHILIP B. SWING,
*One of the Judges of said Court.*

19 SOUTHERN DIST. OF OHIO, *ss:*

I rec'd this writ at Cin'ti, in said dist., at 2.10 p. m., on the 10th day Nov., 1871, and made personal service upon Mess. Cox, Burnett & Follett, attorneys for within-named Jno. Beggs, as will appear by their acknowledgment hereon.

W. R. THRALL, *Marshal*,
By L. A. MARTIN, *Deputy.*

Serv., 2 00; copy, 50; 1 m., 06—2 56.

We, the undersigned, attorneys for the within-named John Beggs, hereby acknowledge service of true copy of this writ on this 10th day November, 1871.

COX, BURNETT & FOLLETT,
*Att'ys for Beggs.*

(Indorsement on cover:) No. 450. G. V. Stevenson, collector of internal revenue, plaintiff in error, vs. John Beggs. S. Ohio C. C. U. S. Filed 1st December, 1871.

OUR BEST REPRODUCTION POSSIBLE

Due To

CONDITION OF ORIGINAL

# In the Supreme Court of the United States.

DECEMBER TERM, 1872.

GUSTAVUS V. STEVENSON, *Collector, &c.*,
*Plaintiff in Error,*
*vs.*
JOHN BEGGS.
} No. 213.

*In error to the Circuit Court of the United States for the Southern District of Ohio.*

BRIEF FOR THE PLAINTIFF IN ERROR.

# In the Supreme Court of the United States.

DECEMBER TERM, 1872.

---

GUSTAVUS V. STEVENSON, *Collector, &c.*, *Plaintiff in Error*,
*vs.*
JOHN BEGGS.

No. 213.

---

*In error to the Circuit Court of the United States for the Southern District of Ohio.*

## BRIEF FOR THE PLAINTIFF IN ERROR.

### STATEMENT.

This is an action to recover back a tax imposed on the defendant in error under sections 10 and 20 of the statute of July 20, 1868, (15 Stats. at Large, 129, 133, 134.) Judgment was given in the court below for the plaintiff.

The material parts of the statutes are as follows:

Section 10 provides that the assessor "shall proceed at the expense of the United States, with the aid of some competent and skilful person to be designated by the Commissioner of Internal Revenue, to make survey of each distillery registered for the production of spirits

in his district, to estimate and determine its true producing capacity, and in like manner shall estimate and determine the capacity of any such distillery as may hereafter be so registered in said district, a written report of which shall be made in triplicate, signed by the assessor and the person aiding in making the same, one copy of which shall be furnished to the distiller, one retained by the assessor, and the other immediately transmitted to the Commissioner of Internal Revenue. If the Commissioner of Internal Revenue shall at any time be satisfied that such report of the capacity of a distillery is in any respect incorrect or needs revision, he shall direct the assessor to make in like manner another survey of said distillery."

"SEC. 20. *And be it further enacted*, That on receipt of the distiller's first return in each month, the assessor shall inquire and determine whether said distiller has accounted, in his returns for the preceding month, for all the spirits produced by him; and to determine the quantity of spirits thus to be accounted for, the whole quantity of materials used in the production of spirits shall be ascertained; and forty-five gallons of mash or beer, brewed or fermented from grain, shall represent not less than one bushel of grain; and seven gallons of mash or beer, brewed or fermented from molasses, shall represent not less than one gallon of molasses. In case the return of the distiller shall have been less than the quantity thus ascertained, the distiller or other person liable shall be assessed for such deficiency at the rate of fifty cents for every proof gallon, together with the special tax of four dollars for every cask of forty proof gallons, and the collector shall proceed to collect the same as in cases of other assessments for deficiencies; but in no case shall the quantity of spirits returned by the distiller, together with the quantity so assessed, be for a less quantity of spirits than eighty per centum of

the producing capacity of the distillery, *as estimated under the provisions of this act.*"

This case was heard by the judge without a jury, and his findings of facts are in the Record, pp. 9, 10. The essential facts are these: The distiller, in good faith, made a return of the spirits distilled by him during the months of September, October, and November, 1868, which amounted to more than eighty per cent. of the *actual* producing capacity of his distillery, but to less than eighty per cent. of the official estimate of its producing capacity as made under section 10 of the act of 1868, *ubi supra*, and paid all the taxes assessed thereon. The assessor made a second assessment on the distiller as for a deficiency on the difference between the amount of spirits actually distilled and the eighty per cent. under the official estimate; and the action is brought to recover back the second assessment.

ASSIGNMENT OF ERROR.

The estimate of the producing capacity of a distillery made under section 10 of the act of July 20, 1868, is conclusive and binding on the Government and distiller for all purposes until corrected by order of the Commissioner of Internal Revenue, as provided for in that section, and cannot be impeached in an action to recover back the tax.

ARGUMENT.

Section 10 makes detailed and particular provision for estimating by competent persons the producing

capacity of a distillery, and for giving notice of that estimate to the distiller and to the Commissioner of Internal Revenue; and it authorizes the Commissioner, upon being convinced that the estimate thus made is erroneous, to order a new estimate to be made. Here is a complete system for measuring the producing capacity of a distillery, and for correcting any errors made in such measurement; and it is submitted that any error of the assessor and his assistant must be corrected in the manner pointed out, namely, by appeal to the Commissioner of Internal Revenue. But section 20 would seem to place the question beyond a doubt. The eighty per cent. therein required to be assessed is the "eighty per centum of the producing capacity of the distillery, *as estimated under the provisions of this act*," namely, under section 10.

The case falls within the principle established in many States, that an action will not lie to recover back a tax imposed on an over-valuation of property where the statutes provide a remedy for the correction of any errors made by assessors in valuing property.

Ontario Bank *vs.* Bunnell, 10 Wend., 186.

Osborn *vs.* Danvers, 6 Pick., 98.

Howe *vs.* Boston, 7 Cush., 273.

See also for analogous decisions—

Nichols *vs.* United States, 7 Wallace, 122.

Meade *vs.* United States, 9 Wallace, 691.

De Bode *vs.* The Queen, 3 H. L. Cas., 449.

Belcher v Linn, 24 How. 508

The estimate provided for by section 10 will be useless if it can be impeached collaterally, and the dis-

tiller is permitted, without appealing to the Commissioners, to correct any error in it, to show that it is erroneous, whenever it is for his interest to do so.

C. H. HILL,
*Assistant Attorney General.*

*Robert Clarke & Co., Prs., 65 West Fourth St., Cin., O.* [*October*, 1872.]

# Supreme Court of United States.

*G. V. Stevenson, Collector of Internal Revenue, etc., Plaintiff in Error,*

*vs.*

*John Beggs.*

***In Error to the Circuit Court of the United States for the Southern District of Ohio.***

BRIEF FOR DEFENDANT IN ERROR.

**J. D. COX,**
**H. L. BURNETT,**
*Of Counsel for Defendant in Error.*

*Robert Clarke & Co., Prs.*, 65 *West Fourth St., Cin., O.* [*October*, 1872.]

# Supreme Court of United States.

*G. V. Stevenson, Collector of Internal Revenue, etc., Plaintiff in Error,*

*vs.*

*John Beggs.*

***In Error to the Circuit Court of the United States for the Southern District of Ohio.***

## BRIEF FOR DEFENDANT IN ERROR.

The only point in dispute in this case is the interpretation of the 20th section of the act of July 20, 1868, entitled, "An act imposing taxes on distilled spirits and tobacco, and for other purposes." U. S. Stat. at Large, vol. 15, p. 133.

The only question as to such interpretation is the following, viz: Is it lawful to assess and collect, as for a deficiency, the taxes upon the difference between the "producing capacity of the distillery," as estimated by the revenue officers, and the amount of spirits actually produced by such distillery, when the distiller has in good faith reported and paid taxes upon his whole production, and when such production exceeds eighty *per centum* of the producing capacity aforesaid?

The Circuit Court answered this question in the negative, and from that decision, the United States, in the name of the collector, prosecutes its writ of error.

THE FACTS.

Suit was brought by John Beggs against G. V. Stevenson, Collector of Internal Revenue, in the Superior Court of Cincinnati, to recover taxes alleged to have been illegally collected; payment under protest, application for refunding to the Internal Revenue Bureau, and the rejection of such application (the statutory conditions precedent to suing the collector) being alleged in the petition. (Record, 4.)

The case was removed by *certiorari* to the Circuit Court of the United States (Record, 1,) and was there tried by the Court under an agreement of the parties waiving a jury and stipulating that "the finding and judgment of the Court shall have the same force and effect as though the same had been tried by a jury." (Record, 9.)

The Circuit Court made a special finding of the facts, and gave judgment thereon for Beggs, the plaintiff below, for the sum of $3,178.30, the amount of taxes found to be unlawfully collected from him, with interest from September 30, 1869, the date of the collection thereof. The journal entry of that finding and judgment contains all that is essential to the case, and is as follows, viz. (Record, 9, 10):

ENTRY.

"This cause came on to be heard, and the parties having, by written consent, waived a jury, the premises were submitted to the Court, who, having heard the evidence, find:

"That the Assessor of the Fourth District of the State of Indiana, in the month of September, 1869, made a second assessment against the plaintiff, a distiller within said district, for deficiency in taxes for the months of September, October, and November, of the year 1868, alleged to be due from him as such distiller;

"That the returns of plaintiff for said months of September, October, and November, 1868, were not false or fraudulent, but were true and correct reports of all the spirits by him actually produced, and the amount of such spirits, so reported, exceeded eighty *per centum* of the producing capacity of the distillery of plaintiff for said months respectively;

"That plaintiff made due payment of all the taxes assessible against him for and by reason of such product so reported;

"But the Court further find that by reason of the survey of said distillery, made in pursuance of section 10 of the 'act imposing taxes on distilled spirits and tobacco, and for other purposes,' approved July 20, 1868, and in force during the said months of September, October, and November, 1868, the said distillery of plaintiff was estimated to be capable of producing from each bushel of grain used three and one-quarter gallons of spirits;

"That the amounts reported by plaintiff as having been produced at his distillery during said months, was less than three and one-quarter gallons for each bushel of grain by him used during that time;

"That the Commissioner of Internal Revenue, claiming that plaintiff was liable and bound to pay and account to the government for taxes upon the amount of three and one quarter gallons for each bushel of grain by him used during those months, advised and directed the assessor aforesaid to assess plaintiff upon the difference between the amount reported in his returns aforesaid and the said estimated product of three and one-quarter gallons per bushel as fixed and determined in said survey;

"That in pursuance of said advice and direction, the said assessor did, in the month of September, 1869, make an assessment of taxes against said plaintiff for said difference, as for a deficiency in his returns for said months, and made due return of said assessments to the defendant, then Collector of Internal Revenue in said Fourth Collection District of Indiana;

"That defendant, having made due demand of plaintiff of said taxes so assessed against him, the plaintiff paid to defendant, on the 30th day of September, 1869, the said sum of $3,178.30, upon the said assessment, under protest;

"That plaintiff afterward, in pursuance of law and the regulations of the Bureau of Internal Revenue, made application for the repayment of the said amount so paid, to the Commissioner of Internal Revenue, who refused to allow the same.

"The Court further find that said assessment was illegal, and that the plaintiff is entitled to recover the same of the defendant.

"The Court also find that defendant had probable cause for demanding said sum of plaintiff.

"Wherefore it is considered and adjudged that plaintiff recover of defendant the said sum of three thousand one hundred and seventy-eight dollars and thirty cents, with interest from September 30, 1869, and his costs herein expended and incurred."

THE STATUTE.

The only material part of section 10 of the act referred to in the above finding and judgment, is that which provides that each assessor shall proceed, "with the aid of some competent and skillful person, to be designated by the Commissioner of Internal Revenue, to make survey of each distillery registered, or intended to be registered, for the production of spirits in his district, to estimate and determine its true producing capacity," and make report of the same. Stat. at Large, vol. 15, p. 129.

The estimate for the distillery of Beggs, as is shown in the finding of the Court, was three and one-quarter gallons of spirits from each bushel of grain.

The 20th section of the act of 1868 is as follows, viz:

"SEC. 20. And be it further enacted, That on receipt of the distiller's first return in each month, the assessor shall inquire and determine whether said distiller has

accounted, in his returns for the preceding month, for all the spirits produced by him; and to determine the quantity of spirits thus to be accounted for, the whole quantity of materials used in the production of spirits shall be ascertained; and forty-five gallons of mash or beer, brewed or fermented from grain, shall represent not less than one bushel of grain; and seven gallons of mash or beer, brewed or fermented from molasses, shall represent not less than one gallon of molasses. In case the return of the distiller shall have been less than the quantity thus ascertained, the distiller or other person liable shall be assessed for such deficiency at the rate of fifty cents for every proof gallon, together with the special tax of four dollars for every cask of forty proof gallons, and the collector shall proceed to collect the same as in cases of other assessments for deficiencies; *but in no case shall the quantity of spirits returned by the distiller, together with the quantity so assessed, be for a less quantity of spirits than eighty per centum of the producing capacity of the distillery, as estimated under the provisions of this act.*" Stat. at Large, vol. 15. pp. 133, 134.

It is submitted:

I. That the natural and proper meaning of the statute, according to the ordinary principles of interpretation, giving to every part real purpose and vigor, is that which was given to it by the Circuit Court; and that no other interpretation will give consistency to the whole section, and an intelligible meaning to each part.

II. That such interpretation is sustained by the current of judicial decisions.

III. That it is that which has been uniformly given by the Internal Revenue Bureau, in its published regulations and instructions, the special case at bar being one in which the bureau fell into a singular inconsistency with its own established and published rules.

I. The natural and proper meaning of this statute is that given by the Circuit Court.

Bearing in mind that the "producing capacity of the distillery" is estimated, under the tenth section of the act, by determining the quantity of spirits per bushel of grain which the apparatus is capable of producing, the grain being good and the machinery skillfully used, there seems to be no difficulty in giving a clear and intelligible purpose to each clause of the twentieth section.

1. Its general *object* is stated in the first clause to be, to "determine whether said distiller has accounted in his returns for the preceding month, for all the spirits produced by him."

It is not the purpose of the law to treat him unfairly, nor to tax him upon spirits which he does not produce, but only to ascertain his actual production by a reasonably certain rule, and to prevent fraud in his returns.

2. The *basis of calculation* is stated in the next clause, to wit: "To determine the quantity of spirits thus to be accounted for, the whole quantity of materials used for the production of spirits shall be ascertained."

The distiller has already reported the quantity of materials used and of spirits made, but the revenue officers seek to test the report. In this case, the Court found that Beggs' reports were "*not* false or fraudulent, but were true and correct."

3. The next clause gives a *means of estimating* the quantity of materials used, viz: by reckoning that "forty-five gallons of mash or beer, brewed or fermented from grain, shall represent not less than one bushel of grain.."

The mash tubs and fermenting vats of measured capacity are used under the eye of the government storekeeper (section 21 of act), and dividing their contents by forty-five, gives the number of bushels of grain used, which may then be compared with the distiller's report.

4. We have next the provision, that, if the distiller has returned a less quantity of grain used than this test would show, he shall be assessed for the deficiency, and the assessment shall be collected.

5. The section ends with the proviso, that "in no case shall the quantity of spirits returned by the distiller, together with the quantity so assessed, be for a less quantity of spirits than eighty *per centum* of the producing capacity of the distillery, as estimated under the provisions of this act."

The "producing capacity" is estimated, as we have seen, in the quantity of spirits *per bushel* of grain which the apparatus can make; but in this last clause the gross quantity found by multiplying the product per bushel into the whole number of bushels fermented, is, by a natural substitution, used instead of the circumlocution which would otherwise be necessary.

Taking the several clauses together, it is manifest that no margin or latitude whatever is allowed the distiller as to the *quantity of grain used.* He must report the whole. He can not even use his discretion in making the mash in his tubs thinner than it will be by using one bushel of grain to every forty-five gallons of the mixture, which his vats will contain. He is charged with the use of the quantity of grain which is indicated by this measurement of his vats, and he must use this quantity or pocket the loss; for if he returns less, the assessor must charge him with the deficiency, estimate the gallons of spirits the grain would make, and taxes for that also must be collected from him.

The only latitude allowed is contained in the last clause, known as the eighty *per cent.* clause. His total product in spirits must not be less than eighty *per cent.* of what the whole quantity of grain used will make, at the rate per bushel fixed by the official estimate of the "producing capacity" of his apparatus. The twenty *per cent.* is the maximum allowance to cover the variation in quality of grain, or the accidents or unskillfulness of manufacture.

If the distiller were bound, as was claimed by the Revenue Commissioner in the case at bar, "to pay and account to the government for taxes upon the amount of three and one-quarter gallons for each bushel of grain used by him during those months" (Record, p. 10), which would be at the full rate of his estimated producing capacity, the eighty *per cent.* clause would be made meaningless; for we have seen that the full quantity of grain used must be reported, and to charge taxes upon the full estimated possible production from each bushel, is of course to say that he shall not be assessed upon a less quantity of spirits than "*one hundred*" *per cent.* of the producing capacity of the distillery, as estimated," instead of eighty *per cent.* as the statute has it.

Again, it will be noticed that the section nowhere says anything concerning the gross amount of *spirits* on which the distiller shall pay tax, except in this eighty *per cent.* clause. The proper and natural construction, therefore, is, that he must pay upon the amount actually produced from his grain, with the proviso that such amount shall not fall below four-fifths of the estimated rate of the capacity of his machinery.

If he fails to report the full amount of *grain* according to the capacity of his vats, the deficiency in *grain* is to be reduced to the corresponding quantity of *spirits* which such extra amount of grain would make, and on this deficiency he must pay the "gallon tax" of fifty cents, and the special "barrel tax" of four dollars per barrel for the whole quantity of spirits reckoned as deficiency.

II. Such interpretation is sustained by the current of judicial decisions.

In the case of *United States* v. *Nissley et al.*, on the Iowa circuit, Mr. Justice Miller, of this Court, after examining the language of the 20th section, held as follows:

"Upon a survey of all the provisions of the statute, the intention of Congress seems to be plainly this: The distiller must pay on all he manufactures, even if he produces

up to ninety-five or one hundred *per cent.* of the capacity of the distillery, and therefore we find in the act that the government anxiously provides so many checks against frauds.

"But to set a limit (which Congress deemed to be reasonable) to the extent to which the government might be defrauded, the act declares that the distiller shall absolutely account for eighty *per cent.* of the producing capacity of his distillery. He will have to pay more than this if he actually produces more and it can be shown; but in no event can he escape by paying less than eighty *per cent.* of the amount, which, as estimated by the act, the distillery has the capacity to produce during the time it is in operation." 13 Int. Rev. Record, 175.

In *United States* v. *James W. Reed et al.*, in the Circuit Court for West Tennessee, Judge Withey, after a similar examination of the statute, said:

"Now it is clear that these provisions can easily be reconciled. Thus the tax shall be on the quantity actually produced whenever it equals or exceeds eighty *per cent.* of the producing capacity of the works; whenever, on the contrary, the amount does not equal that quantity, then the tax shall be on a quantity within twenty *per cent.* of the producing capacity; that is, on eighty *per cent.*" 13 Int. Rev. Record, 149.

In the above decision, Judge Withey stated that he had been informed by Judge Emmons that the same interpretation of the statute was given by the latter, in similar cases, in his circuit.

In *Mason & Co.* v. *Peabody, Collector*, in United States Circuit Court, Middle District of Tennessee (13 Int. Rev. Record, 142), Judge Trigg held:

"That it was the intent of this section to impose a tax upon 80-100 of the assessed capacity of every distillery, which must be paid irrespective of its actual product; that if more than 80-100 of the assessed capacity was produced, the tax must be paid upon *the excess* also; that the entire product was meant to be taxed, but the tax

upon 80-100 of the capacity must be paid, at all events, whether so much was produced or not."

See also *United States* v. *Singer*, 12 Int. Rev. Record, 210.

To adopt any other interpretation would violate the principle that laws imposing taxes are never construed beyond the natural import of the language.

"Laws imposing duties are never construed beyond the natural import of the language, and duties are never imposed upon the citizens upon doubtful interpretations, for every duty imposes a burden on the public at large and is construed strictly, and must be made out in a clear and determinate manner from the language of the statute." *Per* Story, J., in *Adams et al.* v. *Bancroft*, 3 Sumner, 387.

III. This interpretation is that which has been uniformly given by the Internal Revenue Bureau, prior to the case at bar.

In September, 1868, soon after the law took effect, one of the Kentucky assessors addressed the bureau for instructions on this subject, and the answer of the Commissioner of Internal Revenue was published by the authority of the bureau for the guidance of its officers (8 Int. Rev. Record, 93). It is as follows, viz:

"TREASURY DEPARTMENT, OFFICE OF INTERNAL REVENUE,
"WASHINGTON, *September* 8, 1868.

"SIR: I have to reply to your letter of August 29, that in determining the true producing capacity of a distillery under section 10, it makes no difference whether the distillery is proposed to be run one, ten, or twenty-four hours, nor what number of bushels the distiller proposes to mash per day.

"You are to determine, first, what number of bushels of grain can be mashed and fermented in twenty-four hours, and second, what quantity of spirits can be produced in twenty-four hours.

"What you are to determine is, the absolute producing capacity, without deduction for any cause, and, to use your

own words, you must estimate the maximum quantity of spirits which can be produced by the distiller, supposing him to run continuously for twenty-four hours.

"The number of bushels which you determine upon these principles can be mashed and fermented in twenty-four hours, is the basis upon which you will assess the *per diem* capacity tax imposed by section 13. The number of bushels so determined, multiplied by the quantity of spirits which can under all circumstances (all the apparatus and machinery being in good order) be produced in the distillery from a bushel of grain, will give the quantity of spirits which can be produced in twenty-four hours; and this is the basis of the examination to be made by you monthly of his return under section 20.

"*If his returns exceed eighty per cent. of this, no assessment is necessary, unless it shall appear that his actual production is in excess of his returns.*

"Very respectfully,

"E. A. ROLLINS, *Commissioner.*"

"EDGAR NEEDHAM, *Assessor, Louisville, Ky.*"

On November 20, A. D. 1868, the Internal Revenue Bureau issued formal instructions, marked series 4, No. 7, and entitled "Supplement No. 2 to regulations concerning the tax on distilled spirits, etc., of August 3, 1868." (9 Internal Rev. Record, 5.)

The fourth paragraph of these instructions contains the following clause relative to the *eighty per cent.* estimate, viz: "To determine the *eighty per cent.* of the capacity, the assessor will take the number of gallons fixed by the survey as the product for twenty-four hours; multiply this by the number of days for which the *per diem* capacity tax should be assessed; *eighty per cent.* of this product is *eighty per cent.* of the capacity as determined by the survey, and should be entered as such on form No. 89. *If this exceeds the reported product, then an additional assessment must be made.*"

Again, on February 1, 1869, some question having arisen as to the language of the instructions quoted above,

especially the part of the context referring to the "required product," the commissioner published a letter for the guidance of his subordinates, which is found on page 43 of vol. 9 of the Internal Revenue Record, in which he says very explicitly:

"Under the instructions supplement 2, series 4, No. 7 (9 Record, 4), the assessor is to find, as the required product, the amount of spirits which the distiller has produced, not by applying some independent arbitrary rule to all cases, but by testing the facts in each case. *If this, so found, is equal to, or in excess of the eighty per cent. as found from the survey, and is not less than the reported production, there is no assessment, as there is no deficiency.*"

Still again, on April 22, 1869, revised instructions were issued by Commissioner Delano, known as Series 5, No. 7, in which, under caption of "Instructions as to reports in form 89," occur the following clauses, viz (9 Int. Rev. Record, 156):

"If the *eighty per cent.* exceeds the reported product, then an assessment must be made on the balance. If the amount actually produced is found to be correctly reported, and the amount so reported is *less* than *eighty per cent.* of the capacity as determined from the survey, the difference between the reported product and *eighty per cent.* must be assessed. On this point the law is imperative. *But if the amount actually produced and reported equals or exceeds the eighty per cent., no assessment is to be made.*"

As in the case at bar, the Circuit Court found that the defendant in error honestly reported the true product of his distillery, and that the same was more than eighty *per cent.* of its estimated capacity, we think it must appear to the Court, as it does to us, in view of the statute, the judicial decisions and the regulations of the Revenue Bureau, a complete mystery how the assessment for deficiency could have been ordered by the bureau in the first place, or persisted in at any stage of the proceedings. The prosecu-

tion of a writ of error in this Court may be understood, on the theory that it is desirable to have a reported decision, which shall have no room for doubtful interpretations of the statute in the future.

IV. In conclusion we would respectfully submit, that even if the interpretation for which we contend had been doubtful, yet, as it had received the explicit sanction of the Internal Revenue Bureau, in its published regulations so often reiterated, and had become the rule for the action of the revenue officers all over the country, such official contemporaneous construction, would not be overridden by the Courts, especially when the change would add to the burdens of the citizen who had honestly reported his manufacture, and would increase the temptations to fraud, by spreading the opinion that interpretations of revenue statutes could be capriciously varied by the administrative officers of the government, in the face of their published official instructions. Every consideration of public policy, as well as the deference usually yielded, both by Courts and by executive officers, to contemporaneous construction which has become well known to the public, would forbid such a change of interpretation to be made now.

We apprehend, however, that there can be no need of applying this principle, because the decision of the Circuit Court is shown to be manifestly in accord with the true meaning of the statute, and to be the only one which would give intelligibility and harmony to all its parts.

J. D. COX,
H. L. BURNETT,
*Of Counsel for Defendant in Error.*